

Protest of) Date: June 4, 1992
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 HAWORTH, INC.)
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 Solicitation No. 389990-92-A-0426) P.S. Protest No. 92-22

DECISION

Haworth, Inc., ("Haworth") timely protests the terms of Solicitation No. 389990-92-A-0426 issued April 13, 1992, by the Procurement Service Office, Columbus, OH. The solicitation, issued under simplified purchasing procedures,^{1/} sought offers for the provision and installation of modular furniture systems^{2/} at a new postal facility in Harrisburg, PA. Proposals were due on May 4.

The solicitation stated that the Postal Service "will only consider the following brand names of modular furniture systems: WES-GROUP, TRENDWAY and GF FURNITURE" Section 1.3 of the solicitation provided a description of the essential characteristics of the furniture systems. Section 3.1 of the solicitation stated that "[t]he Postal Service intends to award a contract to the responsible offeror whose proposal conforming to the solicitation offers the best value to the Postal Service, considering price, price-related factors, and/or other evaluation factors specified elsewhere in this solicitation." No price-related factors or other evaluation factors were set out elsewhere in the solicitation, so price was the sole basis for award.

In its protest, Haworth alleges that although it submitted a timely request for a copy of

^{1/} Simplified purchasing procedures and requirements are set out at section 4.2.1. of the Postal Service's Procurement Manual ("PM"). Although this procurement was estimated to exceed substantially the normal \$50,000 ceiling for simplified purchases, in accordance with PM 4.2.1 b., the contracting officer obtained the approval of the Director of the Eastern Procurement & Materiel Management Service Center to use the simplified purchasing procedure here.

^{2/} The solicitation sought 27 professional work stations, 3 typical cluster units, 1 reception station, 31 desk chairs, 29 guest chairs, and 31 lateral files for delivery by June 12, 1992. The solicitation also included additional items which could be ordered by exercise of contract options for delivery in August.

the solicitation on April 6, the Postal Service refused to furnish a copy to it because the supply of copies had been depleted. Haworth contends that since the Postal Service had advertised this solicitation in the Commerce Business Daily ("CBD"), it had the burden of satisfying all requests for copies of it. Haworth views the Postal Service's failure to provide it a copy of the solicitation as "an unjustified and arbitrary limitation of full and open competition."

Haworth further alleges that although it does not have a copy of the solicitation, it has information which indicates that the referenced solicitation limits offers to three brand-name product lines. Haworth claims that by limiting consideration to three specific product lines, the Postal Service "applied an arbitrary and unreasonable limit to the competitive range." Haworth alleges that the Postal Service is obligated to abide by the provisions for full and open competition contained in the Competition for Contracting Act ("CICA"), Pub. L. 98-369, and is not excused from compliance by the existence of its own procurement regulations.

Haworth asks the Postal Service to withdraw the subject solicitation, revise it to allow for full and open competition, and reissue it at some future date to all prospective offerors who request a copy. In addition, Haworth requests that the Postal Service procurement regulations be amended to delete or revise all language which allows limits or restrictions to be placed on full and open competition. Finally, Haworth requests copies of all documents, memoranda, meeting notes and minutes, and related materials which document the Postal Service's decision to limit this solicitation to three brand name product lines.

In his report, the contracting officer states that he prepared 24 copies of the solicitation, sending six copies to sources provided by the Harrisburg Division, one copy to a minority-owned business identified by the Columbus Procurement Service Office, and the remaining copies to the first sixteen contractors who requested copies in accordance with the CBD announcement.^{1/} Haworth's request was not one of the first sixteen received. The contracting officer further asserts that the Postal Service is not required to obtain full and open competition. The contracting officer states that by sending 23 copies of the solicitation to prospective offerors, he obtained adequate competition and complied with PM 4.1.1 a.^{1/} and PM 4.1.2 f.^{1/}

^{3/} The contracting officer notes that the CBD announcement notified prospective offerors that written requests for the solicitation had to be "received within 10 days after the date of this notice [March 27, 1992] or until supply is exhausted."

^{4/} Section 4.1.1 a. states that "purchases must be made on the basis of adequate competition whenever feasible."

^{5/} PM 4.1.2 f. states, in relevant part:

[T]he purchasing office must maintain a reasonable number of copies of solicitations to be provided to prospective offerors upon request as long as they are available.

In response to the protester's allegations concerning the limitation placed on competition by specifying three brand-name product lines, the contracting officer contends that limiting the number of acceptable brand name products is permitted by PM 2.3.2 c.3.^{1/} and is neither arbitrary nor unreasonable. The contracting officer explains that expanding the number of brand names that had been specified in the solicitation would have increased the time required to award the contract, making it more difficult to meet the requiring activity's tight delivery schedule. The contracting officer also points out that contrary to the protester's assertions, the Postal Service is required to conduct its procurements in accordance with the PM, which is what he did.

Finally, in response to the protester's request for information, the contracting officer states that the determination to limit the solicitation to three brand names was made at a meeting attended by the contracting officer and the Director and Compliance Manager of the Eastern Procurement & Materiel Management Service Center. According to the contracting officer, there were no notes or minutes taken at this meeting.

On May 15, the contracting officer submitted a revised statement to this office, advising us that in response to Haworth's first allegation, he was sending copies of the solicitation to all prospective offerors who had requested them and extending the due date in order to give prospective offerors sufficient time to prepare and submit proposals.^{1/}

In response to the contracting officer's revised statement, the protester reiterates its concern that in limiting the solicitation to three brand names, the contracting officer has "determined the competitive range for this solicitation BEFORE evaluating the proposals." (emphasis in original). The protester also argues that some of the provisions in the PM dealing with competition for Postal Service requirements are ambiguous, specifically, that PM 2.3.2 c.3. is overly broad, allowing contracting officials to curtail full and open competition arbitrarily.

The protester also cites PM 1.7.1 a.^{1/} claiming that its description of "adequate

^{6/} Section 2.3.2 c.3., which discusses the use of brand-name and brand-name or equal product descriptions, provides:

If at least three acceptable brand names are specified, the solicitation may provide that only proposals for those products will be considered.

If fewer than three brand-name products are specified, section 2.3.2 c.4. requires the identification of essential characteristics of the brand-name items, and provision for the consideration of equal items.

^{7/} The protest file does not include the revised solicitation nor identify the revised delivery schedule.

^{8/} PM 1.7.1 a. states, in pertinent part:

competition" and "sufficient sources" do not provide a "clear and explicit definition of Postal Service intentions and requirements for competition for Postal Service business." Haworth contends that this can lead to misunderstandings by potential offerors and mistakes by contracting officers. Haworth also claims that the Postal Service is depriving itself of the benefits of competition by having terms in the PM which grant contracting officers "the authority to place arbitrary and artificial limits on which products, which firms and how many of them may be allowed to compete for US Postal Service business."

The protester further alleges that by sending copies of the solicitations to all prospective offerors and giving them time to prepare proposals, the Postal Service is expressing an interest in receiving a response from offerors like Haworth. Haworth argues that in order to reflect the Postal Service's intention to consider an offer from Haworth, the Postal Service should amend the language of the solicitation to include the words "or equal" as contemplated by PM 2.3.2 c.4.

In support of its request for information, the protester cites PM 1.10.1, which requires purchasing offices to establish a file, and PM 2.1.7 a.1, which requires the contracting officer to develop a source selection plan, and requests that this documentation be provided.^{1/} The protester also asks us to order a thorough review of the Procurement Manual to implement "changes which remove imprecise language and reflect a Postal Service commitment to 'full and open competition'."

Several interested parties submitted comments on Haworth's protest. Max Blau & Sons, Inc. ("Max") states that it is unreasonable for the Postal Service to deny a qualified offeror an opportunity to submit a proposal solely because the Postal Service did not print enough copies of the solicitation. Max also asserts that it is in the public interest for the Postal Service not to limit arbitrarily the manufacturers worthy of consideration in its solicitation. Foster Manufacturing Company submitted similar comments, requesting that the Postal Service withdraw the solicitation and revise it to allow for full and open competition.

Discussion

Haworth raises three issues in its protest. The first, that the Postal Service improperly

Purchases must be made on the basis of adequate competition whenever feasible. Adequate competition means the solicitation and participation of a sufficient number of sources to ensure that the price paid is fair and reasonable.

^{9/} Requests for information are properly directed to the record custodian, in this case, the contracting officer. "This office does not compile information that is not necessary for its decision or resolve conflicts between contracting officers and protesters about the release of information." Dataware Systems Lease, Inc., P.S. Protest No. 91-41, October 10, 1991.

failed to provide it with a copy of the solicitation, has been rendered moot by the contracting officer's decision to mail copies of the solicitation to all offerors who requested them. See Zappia Transportation Services, Inc., P.S. Protest No. 88-40, July 28, 1988. Accordingly, we need not address this issue.

Second, Haworth argues that in identifying only three acceptable brand-name sources, the contracting officer has arbitrarily and unreasonably limited the competitive range before evaluating the proposals and has deprived the Postal Service of full and open competition.^{10/} The protester cites the Competition in Contracting Act as obliging the Postal Service to have full and open competition. 39 U.S.C. ' 410(a) (1988), specifically provides that "no Federal law dealing with public or Federal contracts," except for those laws enumerated in 39 U.S.C. ' 410(b), "shall apply to the exercise of the powers of the Postal Service." CICA is not enumerated in 39 U.S.C. ' 410(b). "Accordingly, due to the general exemption from federal procurement laws in 39 U.S.C. ' 410(a), the Postal Service is not subject to CICA." Falcon Systems, Inc., Comp. Gen. Dec. B-222549, 86-1 CPD & 462, May 14, 1986, aff'd on recon., 86-1 CPD & 526, June 5, 1986; American Telephone Distributors, Inc., P.S. Protest No. 87-117, February 23, 1988.

The Procurement Manual, which is promulgated by the Postal Service under the authority of 39 U.S.C. ' 401 (2), establishes the direction applicable to this procurement. PM 2.3.2 c.1. states that "[w]henver standard or modified commercial products will meet the Postal Service requirements, product descriptions must be used instead of specifications." PM 2.3.2 c.3. further states, as noted above, that "[i]f at least three acceptable brand names are specified, the solicitation may provide that only proposals for those products will be considered." These requirements were met. While the limitation may preclude Haworth from undertaking to offer a conforming equal product, Haworth has not established that the solicitation will not allow adequate competition involving sufficient sources to assure fair and reasonable pricing.

Finally, Haworth contends that various provisions of the Procurement Manual are too broad or ambiguous, and should be revised to allow full and open competition. To the extent that the Haworth is challenging the language of the PM, its challenge is beyond the protest jurisdiction of this office. See EnPro Corporation, P.S. Protest No. 91-48, October 9, 1991; TLT Construction Corp. Inc., P.S. Protest No. 89-75, January 18, 1990. If Haworth wishes to submit suggested Procurement Manual changes to the Procurement Policies and Procedures Division, it is free do so. PM 1.3.1.

^{10/} Strictly speaking, the competitive range is comprised of the those offerors with whom the contracting officer conducts discussions and invites to submit revised proposals. Any proposal that has "a reasonable chance of being selected for award" must be included in the competitive range. Cummins-Allison Corporation, P.S. Protest No. 91-18, June 4, 1991; PM 4.1.5 g.2. Haworth's challenge more correctly involves the limitation on the technical acceptability of offers, rather than their inclusion within the competitive range.

This protest is dismissed in part and denied in part.

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Office of Contracts and Property Law